

21. EMPLOYEE RIGHTS [See also 47.3, 61.2, 62.2, 63.1, 64.2, 72.323, 72.324, 72.325, and 73.3.]

“[T]he employees’ right to organize and bargain effectively with their employer outweighs any advantage which might be found in removing them from the unit.” **UC #4-79**

“Members of the bargaining unit in question have honored the picket lines of other unions which have gone on strike against the District, they have gone on strike themselves, and they have filed grievances challenging actions taken by the District. There can be little doubt that such conduct might be against the wishes of the District. However, it is also conduct, which when engaged in by members of traditional bargaining units, would be protected by the Act.” **UC #2-83**

21.11: Definitions Constitutional

“In Montana, the right to due process requires notice and an opportunity to be heard.” **ULP #38-80 Montana Supreme Court (1986)**

Prior to his discharge for physical disability, a fire fighter met with the fire chief and the operations officer and had an exit interview with the city personnel board. However, the lack of opportunity to obtain redress from either authority deprived the firefighter of his due process, since neither authority could be characterized as an impartial tribunal. **Welsh v. Great Falls (1984)**

Richland County School District did not adhere to the collective bargaining agreement’s procedures governing nontenured teachers. This constituted a denial of due process and precluded consideration of any substantive reasons the School District may have had for the termination. **Savage Education Association v. Richland County School Districts (1984)**

See also **Reiter v. Yellowstone County (1981)**, **Nye v. Department of Livestock (1982)**, **Appeals (1984)**, **Bridger Education Association v. Carbon Jarussi v. School District 28 (1983)**, **Wage Appeal of Highway Patrol Officers v. Board of Personnel County School District No. 2 (1984)**, **Great Falls and Raynes v. Johnson (1985)**, and **In the Matter of Raynes (1985)**.

Mr. Klundt is precluded from raising the issue that his right to due process was “violated by the [three year] delay between the time he filed his unfair labor practice charges and the time his hearing was held. In an earlier appeal by Mr. Klundt the Court considered this identical issue.” **ULP #38-80 Montana Supreme Court (1986)**.

“In complying with the Court Order [declaring two people confidential under 39-31-103 MCA without Board involvement] Butte Silver-Bow has not lived up to its contractual obligation to the Federation and to the employees. Rights and privileges enjoyed under the contract have been taken away from employees without due process and without utilization of the statutory mechanism for determining the composition of bargaining units contained in 39-31-202 MCA.” **ULP #54-89.**

See also **ULPs #19-86, #62-89, and #64-89.**

21.12: Definitions – Statutory

“The tort of wrongful discharge may apply to an at will employment situation. In fact, the theory of wrongful discharge has developed in response to the harshness of the application of the at will doctrine, under which an employment may be terminated without cause.” **Nye v. Department of Livestock (1982)**

See **ULP #34-78, Reiter v. Yellowstone County (1981)**, and **Jarussi v. School District 28 (1983).**

Pursuant to Section 39-31-201 “Public employees shall have and shall be protected in the exercise of the right of self organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.” **ULPs #19-86, #62-89, #64-89, and #8-92.**

21.13: Right to Self-Organization

“To hold that the probation officers belong in a unit of their own would, for all practical purposes, deny them their right to organize and bargain collectively. They are small in number and would be relatively ineffective as a bargaining unit.” **UC #4-79**

“Legislative policy in Montana protects public employees’ rights of self-organization.... Implicit in this statement of rights [Section **39-31-201**] is the policy to uphold free choice in collective bargaining representation, and the Board of Personnel Appeals, in administering the collective bargaining laws for public employees, must be very sensitive to that policy. The difficulty is in finding the proper standards.” **DC #17-79.**

“Slim Campbell was admittedly taking the lead into looking into the employees’ rights under the collective bargaining act and circulating the materials supplied by the Board of Personnel Appeals.... Thus we can conclude that Slim

Campbell's activities, even though they were not fruitful, were protected activities within the meaning of Section 39-31-201 MCA." **ULP #2-85**

See **ULP #54-89**.

21.2: Right to Self-Organization

See **ULP #62-89**.

21.3: Right To Form, Join or Assist Labor Organization

The employees who were excluded from the unit under consideration were not denied rights guaranteed them. "[T]hey have the same rights now which they had before. They are free to contact any labor organization concerning representation and [to initiate] proceedings necessary to be included in an appropriate unit." **UD #18-77**

"The individual members have the right to have their dues deducted as long as they submit written authorization to the School District." **ULP #29-84**

See also **ULP #34-78**.

"Section 39-31-201, MCA in language very similar to Section 7 of the National Labor Relations Act, states that public employees shall have and shall be protected in the exercise of certain rights or activities. These protected activities include assisting any labor organization and engaging in concerted activities for the purpose of mutual aid or protection. The mutual aid or protection clause protects activities beyond grievance settlement, collective bargaining and self-organization. **NLRB v. Coca Cola Bottling Company of Buffalo, Inc.**, 811 F.2d 82, 124 LRRM 2585; **Eastex, Inc. v. NLRB**, 556 F.2d 1280, 98 LRRM 2717." **ULP #1-87**.

See also **ULPs #54-89 and #62-89**.

21.4: Right to Bargain Collectively

See **ULPs #54-89 and #62-89**.

21.5: Right to Engage in Concerted Activity [See also 61.2, 63.1, and 64.2.]

"After more than 40 years of construction by federal and state courts, 'concerted activities' indisputably, has become a labor law term, a technical phrase which has 'acquired a peculiar and appropriate meaning in law.' That meaning includes strikes." **Department of Highways v. Public Employees Craft Council (1974)**

“[T]he test to determine if employee’s communications are protected activities is: (1) Did the appeal to the public concern primarily working conditions? (2) Did the appeal to the public needlessly tarnish the company’s image? (A) Were the assertions made in reckless disregard of the truth? (B) Were the assertions made in the spirit of loyal opposition -- not out of malice or anger?” [See **NLRB v. Electrical Workers (Jefferson Standard Broadcasting Company)** 346 US 465, 33 LRRM 2183 (1953).] **UL #5-84**

See **ULP #19-80**.

“Concerted activities have been defined as those activities which are for the purpose of inducing or preparing for group action to correct a grievance or complaint. *Indiana Gear Works v. NLRB*, 371 F.2d 273, 64 LRRM 2253; *Prill v. NLRB*, 751 F.2d 941, 118 LRRM 2649; *Ontario Knife Company v. NLRB*, 637 F.2d 840, 106 LRRM 2053.” **ULP #1-87**.

See also **ULPs #19-86 and #62-89**.

21.7: Right to Representation [See also 47.31.]

The Board of Personnel Appeals has the duty to investigate a representation petition and provide for an appropriate hearing if there is reasonable cause to believe that a question of representation exists. **UD #19-75**

“Under both statute and regulations one thing is clear. The board makes unit determinations and the employees, under rules laid down by the board, make representation determinations. The two processes and the roles of the board and the employees are clearly intended to be discrete under the statute, and the regulations purport to carry out that intent.” **DC #22-77 District Court (1978)**

21.8: Right to Strike

“[E]mployees under Montana’s Collective Bargaining for Public Employees Act, Sections **59-1601 through 59-1616, RCM 1947**, are nowhere prohibited from striking. Two other classes of employees – nurses and teachers – have specific restrictions or bans on their right to strike.” **Department of Highways v. Public Employees Craft Council (1974)**

21.92: Waiver – By Employee

A discharged fire fighter’s right to an impartial hearing was not waived by his failure to request such a meeting at the time of his termination because of physical disability. The City failed to advise the fire fighter of his right to a hearing and failed to present evidence that the fire fighter had independent

knowledge of such a right. These factors militated against waiver as a valid defense. **Welsh v. Great Falls (1984)**